IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13673 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SAFI MAHMAD LAD MAHMAD AND ANOTHER

Versus

STATE OF GUJARAT THR' MAMLATDAR &ALT AND ANOTHER

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Appearance :

MR JITENDRA M PATEL for Petitioner No(s).: 1,2.

MR MR MENGDEY, AGP for Respondent No(s).: 1.
MR BG PATEL for Respondent No(s).: 2.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI
Date : 15/07/2005

ORAL JUDGMENT

1. Rule. Mr.M.R.Mengday,learned AGP waives service of notice of rule on behalf of respondent No.1. Learned advocate Mr.B.G.Patel appearing on caveat waives service of notice of rule on behalf of respondent No.2. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioners have challenged the orders passed by the Mamlatdar and ALT dated 5th July 1990 , by Deputy Collector dated 29th February 1992 and by Gujarat Revenue Tribunal dated 5th April 2005. By the impugned orders, the revenue authorities and GRT were pleased to declare that the act of entering the names of the petitioners in the suit lands viz. lands bearing Survey No.11, admeasuring 23 acres and 20 gunthas of village Kahnpur, Taluka; Dholka was illegal since the land in question was granted to respondent No.2 herein under the provisions of Bombay Tenancy and Agriculture Lands Act. The prayer of the petitioners before the Gujarat Revenue Tribunal for restoring the original possession of the land was also turned down and the tribunal confirmed the orders passed by the authorities below to forfeit the land to order to vesting the same in the Government.

3. After some arguments while unable to convince the Court to dislodge the findings of the lower Courts regarding the illegality of the transaction in question, the learned advocate for the petitioners submitted that in any case, the Mamlatdar ought to have inquired whether the parties are prepared to restore the original position of the land before ordering forfeiture thereof. He submitted that the tribunal also did not examine this aspect of the matter in proper perspective and turned down the offer of the petitioners on the ground that during the pendency of the proceedings, no such offer was earlier made. He submitted that even now if an opportunity is given, the petitioners are willing to restore original position of the land. Learned advocate Shri Patel appearing for respondent No.2 also supported this suggestion.

4. In view of the above discussions while upholding the orders passed by the authorities below and the Gujarat Revenue Tribunal by which the transaction through which the petitioners entered into the suit lands was set aside, the proceedings are remanded back to the Mamlatdar only for the purpose of formally recording the willingness of the parties to restore the original position of the land and to pass appropriate consequential orders in this regard. Obviously, if restoration is permitted, forfeiture of the land would have to be recalled.

5. Petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(AKIL KURESHI, J.)

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